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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RHONDA WILKINSON,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT,

Defendant.

2:05-CV-1083 JCM (RJJ)

**ORDER**

Presently before the court is defendant Clark County School District's motion to strike jury demand. (Doc. #96). The plaintiff has responded (doc. #101), and the defendant has replied (doc. #102).

Plaintiff Rhonda Wilkinson filed the instant suit in state court on August 17, 2005. (Doc. #1, ex. 1). Her complaint contained no jury demand. The defendant then removed the case to this court on September 6, 2005, (doc. #1) and filed its answer on September 8, 2005. (Doc. #5). On March 9, 2007, this court granted summary judgment in favor of the defendant (doc. #64), and the plaintiff subsequently appealed (doc. #73). The Ninth Circuit reversed as to plaintiff's retaliation claim (doc. #84). On December 6, 2005, plaintiff filed a demand for trial by jury. (Doc. #95).

On any issue triable of right by a jury, a party may demand a jury trial by serving the other parties with a written demand no later than 10 days after the last pleading directed to the issue is

1 served. FED. R. CIV. P. 38(b)(1) (2005).<sup>1</sup> The Federal Rules of Civil Procedure also state that the  
2 court, in its discretion, may order a jury trial on any issue for which the jury may have been  
3 demanded. *See Pac. Fisheries Corp. v. HHH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir.  
4 2001) (citing FED. R. CIV. P. 39(b)). “That discretion is narrow, however, and does not permit a court  
5 to grant relief when the failure to make a timely demand results from an oversight or inadvertence.”  
6 *Id.* These rules apply equally to *pro se* litigants. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080  
7 (9th Cir. 2002) (holding that a *pro se* litigant’s good faith mistake as to the deadline for making jury  
8 demand established inadvertence, which is insufficient to grant relief); *see also Kulas v. Flores*, 255  
9 F.3d 780, 784 (9th Cir. 2001) (holding that *pro se* plaintiff waived the right to trial by jury by failing  
10 to file a timely demand under Rule 38(b)).

11 In the instant case, plaintiff filed a demand for jury trial over five years past the Rule 38  
12 deadline and almost a year after the Ninth Circuit remanded the case on the retaliation claim. The  
13 plaintiff has presented no reason for excusing her failure, other than inadvertence, and the court sees  
14 no viable basis for making an exception as the case has already proceeded through discovery,  
15 summary judgment and appeal.

16 Accordingly,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion to  
18 strike jury demand (doc. #96) is GRANTED.

19 DATED March 21, 2011.

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23 **UNITED STATES DISTRICT JUDGE**

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27 <sup>1</sup> The defendant’s answer was filed September 8, 2005. (Doc. #5). Thus, although the rule  
28 was amended in 2009 to increase the filing period from ten to fourteen days, the 2005 version of the  
rule applies, and plaintiff’s jury demand was due on September 22, 2005.